104TH CONGRESS
1ST SESSION

H. R. 797

To amend the Internal Revenue Code of 1986 to establish a Higher Education Accumulation Program (HEAP) under which individuals are allowed a deduction for contributions to HEAP accounts.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 2, 1995

Ms. ESHOO (for herself, Mr. KENNEDY of Rhode Island, Mr. MILLER of California, Mr. FARR, Mr. FROST, Mr. COLEMAN, Ms. WOOLSEY, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. HILLIARD, Ms. PELOSI, Mr. MINETA, Mr. LIPINSKI, and Mr. EHLERS) introduced the following bill; which was referred to the Committee on Ways and Means

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A BILL

To amend the Internal Revenue Code of 1986 to establish a Higher Education Accumulation Program (HEAP) under which individuals are allowed a deduction for contributions to HEAP accounts.

1   *Be it enacted by the Senate and House of Representa-*

2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4   This Act may be cited as the ''Higher Education Ac-

5 cumulation Program Act of 1995''.

SEC. 2. DEDUCTION FOR CONTRIBUTIONS TO HEAP AC-
     COUNTS.

(a) IN GENERAL.—Part VII of subchapter B of chap-
ter 1 of the Internal Revenue Code of 1986 (relating to
additional itemized deductions for individuals) is amended
by redesignating section 220 as section 221 and by insert-
ing after section 219 the following new section:

"SEC. 220. HIGHER EDUCATION ACCUMULATION PROGRAM
     (HEAP) ACCOUNTS.

''(a) DEDUCTION ALLOWED.—In the case of an indi-
vidual, there shall be allowed as a deduction an amount
equal to the amount paid in cash for the taxable year by
the taxpayer to a HEAP account established for the pur-
pose of accumulating funds to pay the educational ex-
penses of any child of the taxpayer.

''(b) LIMITATIONS.—

    ''(1) MAXIMUM DEDUCTION.—The amount al-
    lowable as a deduction under subsection (a) to the
    taxpayer for any taxable year shall not exceed
    $5,000 ($2,500 in the case of a married individual
    filing a separate return) for amounts paid for the
    benefit of each child of the taxpayer. In no event
    shall the amount allowable as a deduction under
    subsection (a) to the taxpayer for any taxable year
    exceed $15,000 ($7,500 in the case of a married in-
    dividual filing a separate return).

1   ''(2) DEDUCTION MAY NOT EXCEED COMPENSA-

2 TION.—The amount allowable as a deduction under

3 subsection (a) shall not exceed the amount of com-

4 pensation (as defined in section 219(f)) includible in

5 the taxpayer's gross income for the taxable year.

6   ''(3) ACCOUNT MAY NOT BE ESTABLISHED FOR

7 BENEFIT OF MORE THAN 1 INDIVIDUAL.—A HEAP

8 account may not be established for the benefit of

9 more than 1 individual.

10   ''(4) NO DEDUCTION AFTER BENEFICIARY AT-

11 TAINS AGE 18.—No deduction shall be allowed for

12 any payment to a HEAP account established for the

13 benefit of an individual who has attained age 18 be-

14 fore the close of the calendar year in which such

15 payment is made.

16   ''(c) DEFINITIONS AND SPECIAL RULES.—For pur-

17 poses of this section—

18   ''(1) HEAP ACCOUNT.—The term 'HEAP ac-

19 count' means a trust created or organized in the

20 United States exclusively for the purpose of paying

21 the educational expenses of a child of the taxpayer,

22 but only if the written governing instrument creating

23 the trust meets the following requirements:

24   ''(A) No contribution will be accepted un-

25   less it is in cash, and contributions will not be

1 accepted for the taxable year in excess of

2 $5,000.

3   ''(B) The trustee is a bank (as defined in

4 section 408(n)) or another person who dem-

5 onstrates to the satisfaction of the Secretary

6 that the manner in which that person will ad-

7 minister the trust will be consistent with the re-

8 quirements of this section.

9   ''(C) No part of the trust assets will be in-

10 vested in life insurance contracts.

11   ''(D) The assets of the trust shall not be

12 commingled with other property except in a

13 common trust fund or common investment

14 fund.

15   ''(E) On the termination date—

16   ''(i) the balance in the account shall

17 be distributed to the individual for whose

18 benefit the account is established, or

19   ''(ii) at the election of such individual,

20 such account shall be treated for purposes

21 of this title as an individual retirement ac-

22 count.

23   ''(2) CHILD.—The term 'child' has the meaning

24 given such term by section 151(c)(3).

1   ''(3) TERMINATION DATE.—The term 'termi-

2 nation date' means—

3   ''(A) the date the beneficiary attains age

4 25,

5   ''(B) if the beneficiary is at least a half-

6 time student on the date referred to in subpara-

7 graph (A), the last day of the last school year

8 for which the beneficiary is at least a half-time

9 student, or

10   ''(C) the date of the beneficiary's death.

11   ''(4) EDUCATIONAL EXPENSES.—The term

12 'educational expenses' means—

13   ''(A) tuition and fees required for the en-

14 rollment or attendance of a student at an eligi-

15 ble educational institution,

16   ''(B) fees, books, supplies, and equipment

17 required for courses of instruction at an eligible

18 educational institution, and

19   ''(C) a reasonable allowance for meals and

20 lodging while attending an eligible educational

21 institution.

22   ''(5) ELIGIBLE EDUCATIONAL INSTITUTION.—

23 The term 'eligible educational institution' means—

24   ''(A) an institution of higher education, or

25   ''(B) a vocational school.

1   ''(6) INSTITUTION OF HIGHER EDUCATION.—
2 The term 'institution of higher education' means the
3 institutions described in section 1201(a) or 481(a)
4 of the Higher Education Act of 1965.

5   ''(7) VOCATIONAL SCHOOL.—The term 'voca-
6 tional school' means an area vocational education
7 school as defined in subparagraph (C) or (D) of sec-
8 tion 521(4) of the Carl D. Perkins Vocational and
9 Applied Technology Education Act to the extent
10 such school is located within any State (as defined
11 in such section).

12   ''(8) TIME WHEN CONTRIBUTIONS DEEMED
13 MADE.—A taxpayer shall be deemed to have made a
14 contribution on the last day of the preceding taxable
15 year if the contribution is made on account of such
16 taxable year and is made not later than the time
17 prescribed by law for filing the return for such tax-
18 able year (including extensions thereof).

19 ''(d) TAX TREATMENT OF DISTRIBUTIONS.—

20   ''(1) IN GENERAL.—Except as otherwise pro-
21 vided in this subsection, any amount paid from a
22 HEAP account shall be included in the gross income
23 of the beneficiary of such account for the taxable
24 year in which the payment is received.

1   ''(2) AMOUNTS USED FOR EDUCATION EX-

2 PENSES.—If any payment from a HEAP account is

3 used to pay the educational expenses of the bene-

4 ficiary of such account—

5   ''(A) paragraph (1) shall not apply, but

6   ''(B) ¹⁄₁₀th of such amount shall be in-

7   cluded in gross income of the beneficiary of

8   such account for the taxable year in which the

9   payment is received and for each of the 9 tax-

10   able years thereafter.

11   ''(3) EXCESS CONTRIBUTIONS RETURNED BE-

12 FORE DUE DATE OF RETURN.—Paragraph (1) shall

13 not apply to the distribution of any contribution

14 made during a taxable year to a HEAP account to

15 the extent that such contribution exceeds the

16 amount allowable as a deduction under subsection

17 (a) if—

18   ''(A) such distribution is received on or be-

19   fore the day prescribed by law (including exten-

20   sions of time) for filing such individual's return

21   for such taxable year,

22   ''(B) no deduction is allowed under sub-

23   section (a) with respect to such excess contribu-

24   tion, and

1   ''(C) such distribution is accompanied by

2   the amount of net income attributable to such

3   excess contribution.

4 Any net income described in subparagraph (C) shall

5 be included in the gross income of the individual for

6 the taxable year in which such excess contribution

7 was made.

8   ''(4) TREATMENT AS INDIVIDUAL RETIREMENT

9 PLAN NOT SUBJECT TO INCOME TAX INCLUSION.—

10 The treatment described in subsection (c)(1)(E)

11 shall not be treated as a distribution for purposes of

12 this subsection or subsection (f).

13 ''(e) TAX TREATMENT OF ACCOUNTS.—

14   ''(1) EXEMPTION FROM TAX.—A HEAP ac-

15 count is exempt from taxation under this subtitle

16 unless such account has ceased to be a HEAP ac-

17 count by reason of paragraph (2) or (3). Notwith-

18 standing the preceding sentence, any such account is

19 subject to the taxes imposed by section 511 (relating

20 to imposition of tax on unrelated business income of

21 charitable, etc. organizations).

22   ''(2) LOSS OF EXEMPTION OF ACCOUNT WHERE

23 INDIVIDUAL ENGAGES IN PROHIBITED TRANS-

24 ACTION.—

1   ''(A) IN GENERAL.—If the individual for

2   whose benefit a HEAP account is established or

3   any individual who contributes to such account

4   engages in any transaction prohibited by section

5   4975 with respect to the account, the account

6   shall cease to be a HEAP account as of the

7   first day of the taxable year (of the individual

8   so engaging in such transaction) during which

9   such transaction occurs.

10   ''(B) ACCOUNT TREATED AS DISTRIBUTING

11   ALL ITS ASSETS.—In any case in which any ac-

12   count ceases to be a HEAP account by reason

13   of subparagraph (A) as of the first day of any

14   taxable year, paragraph (1) of subsection (d)

15   shall apply as if there was a distribution on

16   such first day in an amount equal to the fair

17   market value (on such first day) of all assets in

18   the account (on such first day).

19   ''(3) EFFECT OF PLEDGING ACCOUNT AS SECU-

20   RITY.—If, during any taxable year, the individual for

21   whose benefit a HEAP account is established, or any

22   individual who contributes to such account, uses the

23   account or any portion thereof as security for a loan,

24   the portion so used shall be treated as distributed to

25   the individual so using such portion.

1   "(f) ADDITIONAL TAX ON CERTAIN DISTRIBU-

2 TIONS.—

3   "(1) DISTRIBUTION NOT USED FOR EDU-

4   CATIONAL EXPENSES.—If any payment from a

5   HEAP account is used for any purpose other than

6   the payment of the education expenses of the bene-

7   ficiary of such account, the tax liability under this

8   chapter of such beneficiary for the taxable year in

9   which the payment is received shall be increased by

10   an amount equal to 10 percent of such payment.

11   "(2) DISTRIBUTIONS ON TERMINATION OF AC-

12   COUNT.—Paragraph (1) shall be applied by sub-

13   stituting '5 percent' for '10 percent' in the case of

14   any distribution made on the termination date (other

15   than by reason of the beneficiary's death).

16   "(3) DISABILITY OR DEATH CASES.—Para-

17   graphs (1) and (2) shall not apply if the distribution

18   is made after the account beneficiary becomes dis-

19   abled within the meaning of section 72(m)(7) or

20   dies.

21   "(4) DISQUALIFICATION CASES.—Any amount

22   treated under paragraph (2) or (3) of subsection (e)

23   as distributed from a HEAP account shall be treat-

24   ed as a distribution to which the tax imposed by

25   paragraph (1) applies.

1   ''(g) COMMUNITY PROPERTY LAWS.—This section
2 shall be applied without regard to any community property
3 laws.

4   ''(h) CUSTODIAL ACCOUNTS.—For purposes of this
5 section, a custodial account shall be treated as a trust if
6 the assets of such account are held by a bank (as defined
7 in section 408(n)) or another person who demonstrates,
8 to the satisfaction of the Secretary, that the manner in
9 which he will administer the account will be consistent
10 with the requirements of this section, and if the custodial
11 account would, except for the fact that it is not a trust,
12 constitute a HEAP account described in subsection (c)(1).
13 For purposes of this title, in the case of a custodial ac-
14 count treated as a trust by reason of the preceding sen-
15 tence, the custodian of such account shall be treated as
16 the trustee thereof.

17   ''(i) REPORTS.—The trustee of a HEAP account
18 shall make such reports regarding such account to the
19 Secretary and to the individual for whose benefit the ac-
20 count is maintained with respect to contributions, dis-
21 tributions, and such other matters as the Secretary may
22 require under regulations. The reports required by this
23 subsection shall be filed at such time and in such manner
24 and furnished to such individuals at such time and in such
25 manner as may be required by those regulations.''

1   (b) DEDUCTION ALLOWED IN ARRIVING AT AD-

2 JUSTED GROSS INCOME.—Paragraph (7) of section 62(a)

3 of such Code (relating to retirement savings) is

4 amended—

5   (1) by inserting "OR EDUCATION" after "RE-

6   TIREMENT" in the heading of such paragraph, and

7   (2) by inserting before the period at the end

8   thereof the following: "and the deduction allowed by

9   section 220 (relating to HEAP accounts)".

10   (c) TAX ON EXCESS CONTRIBUTIONS.—Section 4973

11 of such Code (relating to tax on excess contributions to

12 individual retirement accounts, certain section 403(b) con-

13 tracts, and certain individual retirement annuities) is

14 amended—

15   (1) by inserting "**HEAP ACCOUNTS,**" after

16   "**ACCOUNTS,**" in the heading of such section,

17   (2) by striking out "or" at the end of para-

18   graph (1) of subsection (a),

19   (3) by redesignating paragraph (2) of sub-

20   section (a) as paragraph (3) and by inserting after

21   paragraph (1) the following new paragraph:

22   "(2) a HEAP account (within the meaning of

23   section 220(c)(1)), or", and

24   (4) by adding at the end thereof the following

25   new subsection:

1   ''(d) Excess Contributions to HEAP Ac-

2 counts.—For purposes of this section, in the case of a

3 HEAP account, the term 'excess contributions' means the

4 amount by which the amount contributed for the taxable

5 year to the account exceeds the amount allowable as a de-

6 duction under section 220 for such taxable year. For pur-

7 poses of this subsection, any contribution which is distrib-

8 uted out of the HEAP account in a distribution to which

9 section 220(d)(3) applies shall be treated as an amount

10 not contributed.''

11   (d) Tax on Prohibited Transactions.—Section

12 4975 of such Code (relating to prohibited transactions)

13 is amended—

14   (1) by adding at the end of subsection (c) the

15   following new paragraph:

16   ''(4) Special rule for heap accounts.—An

17   individual for whose benefit a HEAP account is es-

18   tablished and any contributor to such account shall

19   be exempt from the tax imposed by this section with

20   respect to any transaction concerning such account

21   (which would otherwise be taxable under this sec-

22   tion) if, with respect to such transaction, the ac-

23   count ceases to be a HEAP account by reason of the

24   application of section 220(e)(2)(A) to such ac-

25   count.'', and

1   (2) by inserting '', a HEAP account described

2   in section 220(c)(1),'' in subsection (e)(1) after ''de-

3   scribed in section 408(a)''.

4   (e) FAILURE TO PROVIDE REPORTS ON HEAP AC-

5 COUNTS.—Section 6693 of such Code (relating to failure

6 to provide reports on individual retirement accounts or an-

7 nuities) is amended—

8   (1) by inserting ''**OR ON HEAP ACCOUNTS**''

9   after ''**ANNUITIES**'' in the heading of such section,

10   and

11   (2) by adding at the end of subsection (a) the

12   following new sentence: ''The person required by sec-

13   tion 220(i) to file a report regarding a HEAP ac-

14   count at the time and in the manner required by

15   such section shall pay a penalty of $50 for each fail-

16   ure, unless it is shown that such failure is due to

17   reasonable cause.''.

18   (f) CLERICAL AMENDMENTS.—

19   (1) The table of sections for part VII of sub-

20   chapter B of chapter 1 of such Code is amended by

21   striking out the item relating to section 220 and in-

22   serting in lieu thereof the following new items:

> ''Sec. 220. HEAP accounts.
> ''Sec. 221. Cross reference.''

23   (2) The table of sections for chapter 43 of such

24   Code is amended by striking out the item relating to

1 section 4973 and inserting in lieu thereof the follow-

2 ing new item:

> "Sec. 4973. Tax on excess contributions to individual retirement accounts, HEAP accounts, certain 403(b) contracts, and certain individual retirement annuities."

3   (3) The table of sections for subchapter B of

4 chapter 68 of such Code is amended by striking out

5 the item relating to section 6693 and inserting in

6 lieu thereof the following new item:

> "Sec. 6693. Failure to provide reports on individual retirement accounts or annuities or on HEAP accounts."

7 (g) EFFECTIVE DATE.—The amendments made by

8 this section shall apply to contributions made in taxable

9 years beginning after December 31, 1995.

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